Nobel's case for one can imagine no safer place than her domestic doorstep which she was in the habit of passing and re-passing many times a day.

That brings me to Viscount Maugham's third question: was the act which the workman was engaged in performing done by her for the purposes of and in connection with her employers' trade or business? Here the answer is clearly in the affirmative. As far as the evidence goes, she did not go home to see to her children or to change her shoes or to fetch her lunch or for any other private purpose. She went home to fetch the tool which was necessary for doing her day's work and which was provided for her by her employers for that purpose, and it was clearly her intention, when she had obtained it, to go to the place where her employers required her to use it. As Scrutton L.J. said of a workman who was killed while fetching tools from a forbidden area of the colliery in which he was employed (*Thomas* v. *Pentremawr Colliery Co., Ltd.*[9]):—

"The question is whether the inference can be drawn that he went there because he was going to use the tools he went to fetch in his employers' business;"

The answer to that question here is "yes".

I am accordingly compelled to the conclusion that the appeal should be allowed and the award of the arbitrator restored.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal allowed.

Solicitors: *P. G. Lim; Shearn, Delamore & Co.*

PALANIAPPA CHETTIAR v. TAN JAN & ANOR.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) November 12, 1964]

[K.L. — Federal Court Civil Appeal No. 60 of 1964]

Moneylending — Certificate signed by moneylender or his agent — Certificate annexed to affidavit of moneylender's agent — Moneylenders Ordinance, 1951, s. 21.

Practice and procedure — Affidavit — Exhibit to — Whether part of — Signature.

The appellant was a moneylender and had lent a sum of $10,000 to the respondents who by way of security for the loan, had executed in his favour a charge of land. The respondents defaulted in payment and the appellant brought an action to realise his security. The proceedings were commenced by way of originating summons and the summons was supported by an affidavit setting out the necessary facts and having exhibited to it the moneylender's account and the certificate required by section 21 of the Moneylenders Ordinance. The certificate was not signed by the appellant. The learned judge dismissed the application on the ground that there had not been compliance with section 21 of the Ordinance as there was no certificate signed by the applicant or his agent.

Held: exhibits to an affidavit formed part of the affidavit as if they had been copied out in the affidavit and therefore in this case there was compliance with section 21 of the Moneylenders Ordinance as the certificate was part of the affidavit and the signature attached to the affidavit as a whole and to every part of it.

Cases referred to:—

(1) *In Re Hinchcliffe* [1895] 1 Ch. 117 at page 120.

(2) *Re Moritz (deceased)* [1959] 3 All E.R. 767.

FEDERAL COURT.

R. R. Chelliah and *P. S. Maniam* for the appellant.

N. Ramachandran for respondents.

Thomson L.P. (delivering oral judgment): This is an appeal from a decision of the High Court in Seremban.

The appellant is a moneylender and on 25th September, 1961, he lent a sum of $10,000 to the respondents who, by way of security for the loan, executed in his favour a charge of land.

In the event the respondents defaulted in their obligations under the contract of loan and on 17th December, 1963, the appellant commenced the present proceedings with a view to realising his security. The proceedings being for realisation of the security, which was a charge of land, and not being a suit on the contract, were commenced by way of originating summons and that summons was supported by an affidavit setting out the necessary facts and having exhibited to it the moneylender's account which, by section 21 of the Moneylenders Ordinance, is required to be produced on the commencement of any proceedings for recovery of money lent or for the enforcement of any security given in connection with money lent where the transaction attracts the provisions of the Moneylenders Ordinance.

The affidavit was signed by the appellant's agent and was attested by a commissioner for oaths. There were exhibited to it the charge and the certificate required by section 21. That certificate or rather, I should say at this stage, the sheet of paper on which it is written was not signed by the appellant. It was, however, clearly part of the affidavit which he had signed because it bore the certificate by the commissioner for oaths:—

"This is the Exhibit marked 'P3' referred to in the Affidavit of M. Veerappa Chettiar son of Muthuveerappa Chettiar affirmed before me this 29th day of November, 1963."

When the matter came on for hearing the point was taken up that there had not been compliance with section 21 of the Ordinance in that there was no certificate signed by the applicant or his agent. In the event the trial

judge accepted the point as well-founded and dismissed the application for foreclosure.

That decision has now been appealed against on the ground that the judge was wrong in saying there had been a failure to comply with section 21.

Before us the matter has been rather more fully argued than it was at the trial, and I find myself compelled to the view that there was compliance with section 21.

In the first place it was put to us that by reason of the Schedule to the Moneylenders Ordinance which sets out the form of the certificate under sections 19 and 21 and which contains no place for a signature there is no necessity for the certificate under section 21 to be signed. Section 21, however, refers to the certificate which it requires as that prescribed by section 19. Section 19 speaks of a certificate being made and signed and says that:—

"a statement of account given in the form in the First Schedule to this Ordinance shall be deemed to comply with the requirements of this sub-section."

On that my view is that what it means is that a statement in the form set out in the Schedule is a statement within the meaning of the word "statement" as used in section 19, but it does not in any way dispense with the necessity for that statement having been drawn up in the form in the Schedule and then being signed. That argument is lacking in merit.

There is, however, much substance in the second argument which has been addressed to us, which was based on the case of *In re Hinchliffe* [1] which was decided in 1896 and which as recently as 1959, in the case of *Re Moritz (deceased)*,[2] was recognised as still being a correct statement of the law. The issues in that case were entirely different from those in the present case. The question, however, did arise as to whether or not certain exhibits to an affidavit formed part of the affidavit and in that connection Lord Herschell L.C. said that these exhibits:

"form as much part of the affidavit as if they had been actually annexed to and filed with it."

What is even more in point is what was said by A. L. Smith L.J. What he said was this:—

"When a person makes an affidavit, and states therein that he refers to a document marked with the letter A, the effect is just the same as if he had copied it out in the affidavit. It is only made an exhibit to save expense."

In the present case the appellant or his agent said this in the course of his affidavit which was signed:—

"A copy of the statement of account in compliance with sections 19 and 21 of the Moneylenders Ordinance is annexed hereto marked 'P3' ".

So it is. There it is bound up with the rest of the affidavit not with thread or wire but with the attestation of the commissioner for oaths.

In the circumstances it is impossible to resist the conclusion that the certificate is part of the affidavit and that the signature is attached to the affidavit as a whole and therefore to every part of it.

In my view the appeal should be allowed with costs and the order of the High Court dated 6th July, 1964, should be set aside.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal allowed.

Solicitors: *P. S. Maniam & Co.; N. Ramachandran.*

JAGAT SINGH v. CHIA BAN WEE

[O.C.J. (Chua J.) November 13, 1964]

[Singapore — Suit No. 533 of 1962]

Moneylending — Transaction under Moneylenders Ordinance (Cap. 193) — Repeal of old Ordinance by new Ordinance — Moneylender ceasing to be a moneylender — Action for recovery — Subsequent taking of licence under Moneylenders Ordinance, 1959.

Legislation — Repeal — Effect of — "Acquired" or "accrued" right — Interpretation and General Clause Ordinance (Cap. 2), s. 14(c).

The defendant executed a promissory note in favour of the plaintiff, a moneylender, for $5,200 with interest thereon at 48% on August 12, 1958. On September 11, 1959 the old Moneylenders Ordinance (Cap. 193) was repealed and the new Moneylenders Ordinance, 1959, came into force. The plaintiff issued his writ on the May 2, 1962 claiming the sum of $8,093.13 being the principal and the balance of interest on the promissory note. Subsequently on the December 3, 1962 the plaintiff took out a moneylender's licence under the new Ordinance. The defence was that (a) the plaintiff had not complied with section 5 of the old Ordinance in that the note or memorandum was not signed before the money was lent and that the note or memorandum did not contain all the terms of the contract, and (b) the plaintiff had failed without reasonable excuse to comply with the defendant's demand in writing dated March 24, 1960 under section 20(2) of the new Ordinance to supply the defendant with a copy of the promissory note relating to the claim.

Held: (1) there was no obligation on a moneylender to comply with the provisions of section 5 of the old Ordinance and non-compliance of its provisions merely rendered the moneylending contract unenforceable. The section merely gave the borrower a right to defend any claim by his lender and was not an "acquired" or "accrued" right within the meaning of section 14(c) of the Interpretation and General Clauses Ordinance. The right to defend did not become an accrued right until the plaintiff commenced this action by which time the old Ordinance had been repealed. As there was no saving clause in the new Ordinance preserving this mere right, the effect of the repeal was that the right vanished altogether and was no longer available to the defendant;

(2) the plaintiff was not a moneylender within the meaning of the new Ordinance until he took out a licence on December 3, 1962. It cannot be presumed that he was a moneylender between September 11, 1959 and